

# **Should Humanity Have Standing? Broadening Environmental Rights to Combat Climate Change and Regear Capitalism for a Sustainable Future**

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In Christopher Stone's landmark "Should Trees Have Standing?" article, he posed the question of whether nature could, and indeed should, have legally enforceable rights. Today, a handful of countries have granted rights—sometimes in the form of "legal personhood"—to nature generally or to discrete geographic features, such as mountains or rivers. Many more countries recognize in some form a human right to a healthy environment. Litigants across the world—spurred on by the youth climate movements and the looming threat of climate change—have used these rights to force governments (and in some cases, companies) to reduce greenhouse gas emissions. Courts around the world have been increasingly sympathetic to these claims, establishing the judiciary as an important point of leverage for moving society toward meaningful climate action.

In the United States, however, such efforts have met with little success. Environmental rights remain largely in the background of the American legal system. Such rights are rarely constitutionalized (and only at the state level) and are hardly ever recognized by courts. Although Stone's argument has shaped the environmental rights conversation (particularly since being cited in Justice Douglas's dissent in *Sierra Club v. Morton*), that recognition has not resulted in fundamentally strengthened environmental rights. This leads to the central puzzle of my proposed Stone Symposium article: Why has the conception of environmental rights remained so limited in the United States in contrast with other nations?

In this piece, I will seek to answer that question—and to explore how environmental rights might be broadened in the United States as a foundation for judicial intervention in the face of climate change and in support of broader efforts to move society onto a sustainable economic trajectory. In Part I of my proposed piece, I will set the stage for this inquiry.

In Part II I will offer a survey of how environmental rights are treated in other countries, highlighting the jurisprudence abroad that has deepened and widened environmental rights in recent years. In Part III, I will explore the reasons why environmental rights remain crimped in the United States—with particular attention to the reliance by courts on the political question doctrine in climate change cases. I will contrast this restraint with the judiciary's role in vindicating civil rights in the second half of the 20<sup>th</sup> century and gay rights more recently. I will present an argument that suggests that the narrow American view of environmental rights derives not only from the lack of a clear constitutional provision but also from the prevailing U.S. framework of regulation centered on benefit–cost analysis (particularly, the reliance on the Kaldor–Hicks model of social benefit calculations), which effectively privileges economic activity and treats individual environmental rights as inconsequential.

Finally, in Part IV, I will sketch out several legal theories and accompanying political strategies for expanding environmental rights in America—consistent with Christopher Stone's 1972 vision of humanity's moral development over time leading to the gradual extension of rights to those (and

that) which had previously been left out of legal personhood and thus the law's protection. I will argue that the *sustainability imperative* and the existential threat posed by climate change demand that courts revisit their hesitancy to address climate change and establish a more sustainable foundation for 21<sup>st</sup> century capitalism.